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REMARKS

It is respectfully requested that this Amendment Under 37 C.F.R. § 1.114 be entered in the above-identified application prior to continued examination.

In the Final Official Action, the Examiner indicated that claim 41 is allowed and claims 4, 15, 19, 21-29, 37, 39 and 40 contain allowable subject matter.

In the Final Official Action, the Examiner rejected claims 1, 6, 8-14, 17-19, 35 and 38 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 6,119,913 to Adams et al., (hereinafter "Adams").

In the previous response, Applicants respectfully argued that Adams discloses that the tissue is pulled into the device by withdrawing the endoscope and forceps therewith (column 9, lines 10-14 and 26-28) and that Figure 9a of Adams merely shows a forceps that is used to grasp the tissue. Thus, Applicants concluded that Adams simply does not disclose or suggest lifting the tissue into the device by bending but by withdrawal of the endoscope into the device.

In the Advisory Action, the Examiner maintains that Adams shows a bent endoscope (16) in Figure 9a, described in column 9, line 9, as "articulated" and concludes that the endoscope is capable of lifting tissue, given that it is articulated.

Applicants would like to describe the differences between the device of Adams and that which is recited in independent claims 1 and 38 with reference to the below Figures.

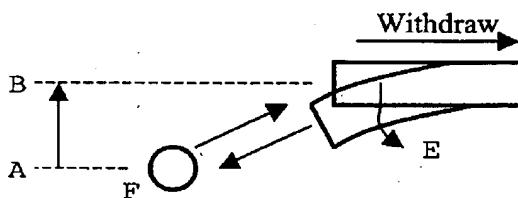


Figure A

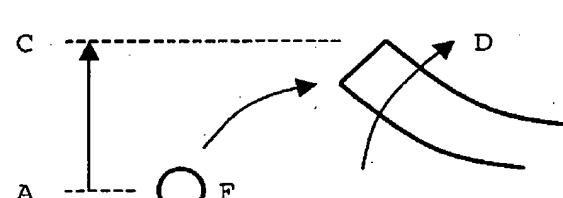


Figure B

Although the endoscope of Adams can be articulated (bent) in the direction indicated by arrow E in Figure 1A above, it is not bent to lift the tissue (F) but to merely direct the distal end of the endoscope to the tissue to be grasped (F). In contrast, Figure B shows lifting the tissue (F) by bending the endoscope as shown by arrow D in Figure B

However, it appears that the Examiner deems the action of returning the endoscope that has been bent in the direction "E" as shown in Figure A to the straight (not bent) state as "lifting." Thus, claims 1 and 38 have been amended to recite bending so as to be directed to the "C" side further from the straight (not bent) state in order to lift from the level "B" further to the level "C" as in Fig. B shown above. Specifically, independent claims 1 and 38 have been amended to recite that the second insertion instrument has a space into which the first insertion instrument is inserted and the first insertion instrument is adapted to be bent in the space to a side opposite to the living tissue that is the object of treatment. Adams does not disclose or suggest such a space.

The amendments to claims 1 and 38 are fully supported in the original disclosure. Thus, no new matter has been entered into the disclosure by way of the present amendment to claims 1 and 38.

Thus, an endoscopic treatment system having the features discussed above and as recited in independent claims 1 and 38, is nowhere disclosed in Adams. Since it has been decided that "anticipation requires the presence in a single prior art reference, disclosure of each and every element of the claimed invention, arranged as in the claim,"<sup>1</sup> independent claims 1 and 38 are not anticipated by Adams. Accordingly, independent claims 1 and 38 patentably distinguish over Adams and are allowable. Claims 6, 8-14, 17-19 and 35 being dependent upon

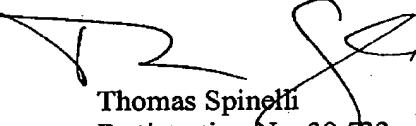
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<sup>1</sup> Lindeman Maschinenfabrik GMBH v. American Hoist and Derrick Company, 730 F.2d 1452, 1458; 221 U.S.P.Q. 481, 485 (Fed. Cir., 1984).

claim 1, are thus at least allowable therewith. Consequently, the Examiner is respectfully requested to withdraw the rejection of claims 1, 6, 8-14, 17-19, 35 and 38 under 35 U.S.C. § 102(b).

In view of the above, it is respectfully submitted that this application is in condition for allowance. Accordingly, it is respectfully requested that this application be allowed and a Notice of Allowance issued. If the Examiner believes that a telephone conference with Applicant's attorneys would be advantageous to the disposition of this case, the Examiner is requested to telephone the undersigned.

Respectfully submitted,



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